

**FILED**

JUL 3 1 2017

Clerk, U.S. District Court  
District Of Montana  
Billings

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARK STEVEN ELK SHOULDER,

Defendant.

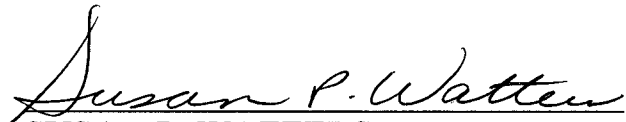
CR 17-40-BLG-SPW

ORDER

Before the Court is Defendant Mark Steven Elk Shoulder's motion to dismiss the indictment. (Doc. 19). Elk Shoulder raises four arguments, all of which have been rejected by the Ninth Circuit: (1) the Wetterling Act is not retroactive (rejected in *United States v. Elk Shoulder*, 738 F.3d 948 (9th Cir. 2013)); (2) SORNA violates the Ex Post Facto Clause (rejected in *Elk Shoulder*, 738 F.3d 948); (3) SORNA violates the Nondelegation Doctrine (rejected in *United States v. Richardson*, 754 F.3d 1143 (9th Cir. 2014)); and (4) SORNA unconstitutionally regulates inactivity in violation of *National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012) (rejected in *United States v. Cabrera-Gutierrez*, 756 F.3d 1125 (9th Cir. 2014)).

Elk Shoulder acknowledges the Ninth Circuit has rejected all of his arguments, but argues those cases were wrongly decided. Even if the Court agreed with Elk Shoulder, it is bound by circuit authority and has no choice but to follow it. *Hart v. Massanari*, 266 F.3d 1155, 1175 (9th Cir. 2001). Elk Shoulder's motion to dismiss (Doc. 19) is therefore DENIED.

DATED this 21<sup>st</sup> day of July, 2017.

  
SUSAN P. WATTERS  
UNITED STATES DISTRICT JUDGE